

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Centro Management, Inc.--Request for
Declaration of Entitlement to Costs

File: B-245858.2

Date: April 1, 1992

Christopher Solop, Esq., Ott, Purdy & Scott, for the
protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for
the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Where agency reinstated protester to competitive range
4 days after receiving notification of protest, thus grant-
ing the relief requested, protester is not entitled to costs
of filing and pursuing the protest. The fact that correc-
tive action is taken as result of a protest does not entitle
protester to reimbursement for such costs where, as in this
case, the agency acts without undue delay.

DECISION

Centro Management, Inc. requests that our Office declare it
entitled to recover the costs of filing and pursuing its
protest in connection with request for proposals (RFP)
No. DAKF40-91-R-0001, issued by the Department of the Army.

We deny the request.

The solicitation provided for full food and dining facility
attendant services at Fort Bragg, North Carolina. It was
issued in April 1991, as a total small business set-aside
and, as amended, provided for the submission of proposals by
June 13. In September, after evaluating initial proposals,
the Army advised Centro that it perceived numerous deficien-
cies in the firm's proposal; that, because of the extent of
proposal revisions that would be required, the Army had
concluded the firm had no reasonable chance of being
selected for award; and that the agency had therefore
eliminated Centro from the competitive range.

On September 26, Centro filed a protest with our Office
requesting reinstatement in the competitive range. On

October 2, the agency advised the protester it was reinstating the firm in the competitive range, and provided Centro with a detailed description of perceived proposal deficiencies to serve as the basis for discussions. When our Office was informed of the corrective action on October 4, we dismissed the protest as academic. Centro then filed this request.


Centro asserts that the Army took corrective action in this matter only because Centro filed a protest. According to the protester, in order to discourage agencies from acting improperly in the first instance, a firm such as Centro, whose protest induces corrective action, is entitled to its costs of filing and pursuing the protest, regardless of how promptly the subsequent corrective action is taken.

There is no basis for granting Centro's request. Our Bid Protest Regulations provide that, where an agency takes corrective action prior to our issuing a decision on the merits, we may declare a protester entitled to "recover reasonable costs of filing and pursuing the protest." 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(e)); Metters Indus., Inc.--Request for Declaration of Entitlement to Costs, B-240391.5, Dec. 12, 1991, 91-2 CPD ¶ 535. Prior to the effective date of this section, our Office did not award costs in such cases. See Pulse Elecs., Inc.--Request for Declaration of Entitlement to Costs, B-243625.3, Aug. 30, 1991, 91-2 CPD ¶ 222. We became concerned, however, that some agencies were taking longer than necessary to initiate corrective action in the face of meritorious protests, thereby causing protesters to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. We believed that providing for the award of costs in cases where the agencies delayed taking corrective action would encourage agencies "to recognize and respond to meritorious protests early in the protest process." 55 Fed. Reg. 12834, 12836 (1990).

Obviously, it was not our intention in adopting the revised provision to award protest costs in every case in which the agency takes corrective action in response to a protest. Rather, we contemplated the award of costs where, based on the circumstances of the case, we found that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Pulse Elecs., Inc., supra.

In this case, there is no question the agency acted promptly. Centro's protest was filed on September 26. On October 2, 4 working days after the Army received formal notification of the protest, the agency took the corrective action the protester sought. As noted above, moreover, the agency not only reconsidered its competitive range determination, but prepared and provided to the protester a

— detailed deficiency letter to serve as the basis for discussions. Such corrective action, taken early in the protest process, is precisely the kind of prompt reaction to a protest that our Regulations are designed to encourage. Pulse Elecs., Inc., supra. It provides no basis for a determination that the payment of protest costs is warranted. Accordingly, Centro's request for a declaration of entitlement to costs is denied. Id.


for James F. Hinchman
General Counsel